

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-CV-10879-JLT

KIMBERLY GENEREUX,)
Plaintiff)
v.) **AFFIDAVIT OF MARK F. ITZKOWITZ**
COLUMBIA SUSSEX CORPORATION,)
STARWOOD HOTELS & RESORTS)
WORLDWIDE, INC., and)
WESTIN HOTEL MANAGEMENT, L.P.,)
Defendants) **IN OPPOSITION TO DEFENDANTS'**
) **MOTION FOR SUMMARY JUDGMENT**

1. My name is Mark F. Itzkowitz. I am an attorney licensed to practice law in the Commonwealth of Massachusetts (BBO #248130) and in the State of New York. I am the attorney for the plaintiff herein.

2. I make this Affidavit freely based upon my personal knowledge.

3. Hereto annexed are true and accurate photocopies of the following documents:

Exhibit "A"	Transcript of the Deposition of Kimberly Genereux (excerpts)
Exhibit "B"	Map & Photo Key
Exhibit "C"	Conference Centre at the Westin Casuarina Resort Site Plan
Exhibit "D"	Site Plan Excerpt-Identifications
Exhibit "E"	Photographs
Exhibit "F"	Affidavit of Kimberly Genereux

Exhibit "G" Royal Cayman Islands Police Service
Letter to Westin Casuarina Attorney
Michael Alberga, September 27, 2005

Exhibit "H" Reports of Eleanor K. Egan, LHMC
(February 21, 2005 & September 16, 2007)

Exhibit "I" Report of David S. Chapin, M.D.
(February 29, 2007 [sic])

Exhibit "J" Report of Norman C. Hursh, ScD, CRC, CVE
(February 10, 2008)

Exhibit "K" Report of Allan M. Feldman, Ph.D.
(February 27, 2008)

Exhibit "L" System License Agreement

Exhibit "M" Transcript of the Deposition of Theodore
Mitchel (excerpts)

Exhibit "N" Transcript of the Deposition of Theodore
Mitchel (excerpts) in *Keppner v. Galleon
Beach Resort, Ltd., et. als.*, Index No.
011724/2003 (N.Y. Sup. Ct., Erie County)

Exhibit "O" Transcript of the Deposition of John
McGovern (excerpts)

Exhibit "P" American Hotel & Lodging Association,
DIRECTORY OF HOTEL & LODGING COMPANIES
(74th ed., 2005)(excerpts)

Exhibit "Q" American Hotel & Lodging Association,
DIRECTORY OF HOTEL & LODGING COMPANIES
(71st ed., 2002)(excerpts)

Exhibit "R" Lashner Rush & Associates Audit
(September 24, 2000)

Exhibit "S" Lashner Rush & Associates Audit (April
24, 2001)

Exhibit "T" Westin Quality Assurance Program/QAP
2000

Exhibit "U" Westin Hotels & Resorts Property
Maintenance Reference Guide

Exhibit "V" Transcript of the Deposition of Theodore
Mitchel (excerpts) in *Reynolds v. Westin
Hotel Company, et. als.*, U.S.D.C. E.D.
Ky. Case No. 97-77 (March 16, 1998)

Exhibit "W" Service Agreement

Exhibit "X" Columbia Sussex website excerpt

Exhibit "Y" *Westin Casuarina Opens Luxury Spa*
(Hospitality Job Resource, February 13,
2002)

Exhibit "Z" Westin Corporate Identity Manual

Exhibit "AA" Columbia Sussex' Manager's Manual

Exhibit "BB" Lashner Rush & Associates Audit (August
30, 1999)

Exhibit "CC" Transcript of the Deposition of Kellie Ann Lowell (excerpts) in *Reynolds v. Westin Hotel Company, et. als.*, U.S.D.C. E.D. Ky. Case No. 97-77

Exhibit "DD" Columbia Sussex Corporation Safety & Loss Prevention Manual

Exhibit "EE" Expert Witness Report of Robert J. McCrie, Ph.D., CPP [filed but not scanned because scanned by defense]

Exhibit "FF" Cayman Islands Annual Report & Official Handbook (1998)

Exhibit "GG" Cayman Islands Annual Report & Official Handbook (1999)

Exhibit "HH" Cayman Islands Annual Report & Official Handbook (2000)

Exhibit "II" Cayman Islands Annual Report & Official Handbook (2001)

Exhibit "JJ" Cayman Islands Annual Report & Official Handbook (2002)

Exhibit "KK" Lashner Rush & Associates Audit (November 5, 2002)

Exhibit "LL" Starwood/Westin Design Review Memorandum

Exhibit "MM" Response of Defendant Columbia Sussex Corporation to Plaintiff's Request for Production of Documents

Exhibit "NN" Correspondence of Mark F. Itzkowitz to Robert J. Brown and John B. Johnson (September 10, 2007)

Exhibit "OO" Correspondence of Mark F. Itzkowitz to Robert J. Brown and John B. Johnson (September 19, 2007)

Exhibit "PP" Correspondence of Robert J. Brown to Mark F. Itzkowitz (September 28, 2007)

Exhibit "QQ" Correspondence of Robert J. Brown to Mark F. Itzkowitz (January 8, 2008)

Exhibit "RR" Correspondence of Robert J. Brown to Mark F. Itzkowitz (January 25, 2008)

Exhibit "SS" ASIS Dynamics (May/June 2000)

Exhibit "TT" ASIS Dynamics (May/ June 2001)

Exhibit "UU" ASIS Dynamics (May/June 2002)

Exhibit "VV" ASIS Dynamics (May/June 2003).

Signed under the pains and penalties of perjury, this 26th day of March, 2008.

MARK F. ITZKOWITZ (BBO #248130)

CERTIFICATE OF SERVICE

I, Mark F. Itzkowitz, counsel for the plaintiff, hereby certify that on this date, I made service of the within document by serving it electronically to registered ECF participants and/or by mailing/faxing/hand-delivering a copy of same to non-registered ECF participants as indicated on the Notice of Electronic Filing ("NEF"), upon the following counsel of record:

John B. Johnson, Esquire Corrigan, Johnson & Tutor, P.A. 141 Tremont Street Boston, MA 02111; and	Robert J. Brown, Esquire Mendes & Mount, LLP 750 7 th Avenue New York, NY 10019-6829.
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s/ Mark F. Itzkowitz
MARK F. ITZKOWITZ (BBO #248130)

Dated: March 26, 2008

UNITED STATE DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Civil Action NO. 05-CV-10879-JLT

KIMBERLY GENEREUX,)
Plaintiff,)
VS.)
COLUMBIA SUSSEX CORPORATION,)
ET AL,)
Defendants.)

- - -

Deposition of THEODORE R. MITCHEL, a witness, was called on behalf of the Plaintiff as upon cross-examination, pursuant to the Rules of Civil Procedure, commencing at 9:30 a.m., on Friday, September 7, 2007, at the Sheraton Cincinnati, in the "A" Armstrong Room at 2826 Terminal Drive, Hebron, Kentucky, before Terence M. Holmes, professional court reporter, and notary public within and for the Commonwealth of Kentucky.

- - -

1 Q. Are you referring to this particular
2 case, Ms. Genereux's case or to something different?

3 A. No, to the Reynolds' case.

4 Q. Okay. And before we get started this
5 morning, we had received a copy of certain pleadings
6 from that case. That's a case also involving the
7 Westin Casuarina, is that correct?

8 A. Yes.

9 Q. Okay. So just to make sure that I'm
10 following this correctly. You've been designated to
11 testify on behalf of Columbia Sussex in two cases in
12 which there were allegations of criminal -- of
13 somebody being hurt as a result of a criminal
14 incident, correct?

15 A. Correct.

16 Q. Okay. Both of those cases involve the
17 Westin Casuarina?

18 A. Yes.

19 Q. Okay. You had mentioned earlier that
20 you also had been designated to testify in civil
21 cases and you mentioned specifically slip and fall
22 cases. How many civil cases approximately have you
23 been designated to testify in?

24 A. I really can't recall, I mean it's
25 probably been somewhere around 10.

1 Genereux. And as you know I'll be asking you a
2 series of questions this morning about the case and
3 the background and the corporate relationship and
4 such. If at any time you don't understand my
5 questions or you don't hear them, by all means please
6 let me know that. Okay.

7 A. Okay.

8 Q. And if you do that, I'll be happy to
9 repeat them, rephrase them or do whatever we need to
10 let you answer them. Is there any reason, that
11 you're aware of, health related or anything else that
12 may interfere with your ability to answer questions
13 honestly today?

14 A. None that I can think of.

15 Q. Okay. Terrific. Then as along as you
16 provide answers, we're gonna assume that you've
17 understood the questions, correct, fair enough?

18 A. Fair enough.

19 Q. Great. Can you tell us where you
20 live?

21 A. I live in Cincinnati, Ohio.

22 Q. Okay. And where in Cincy, if you
23 don't mind?

24 A. The address is 5157 Castlebrook Court.

25 Q. And what do you do for a living?

1 A. I'm employed by Columbia Sussex
2 Corporation as a secretary treasurer.

3 Q. And where do you work out of for
4 Columbia Sussex Corporation?

5 A. Their offices in Ft. Mitchell,
6 Kentucky.

7 Q. Were you working for Columbia Sussex
8 back in May of 2002?

9 A. Yes.

10 Q. And were you working out of the same
11 location at that point?

12 A. Yes.

13 Q. Can you tell us how old you are,
14 please?

15 A. How old am I?

16 Q. Yes.

17 A. I'm 54.

18 Q. Okay. And your date of birth?

19 A. February 11th, 1953.

20 Q. And where were you born?

21 A. Sandusky, Ohio.

22 MR. ITZKOWITZ: Off the record.

23 (Off the record by Mr. Itzkowitz.)

24 Q. Are you married, sir?

25 A. Yes.

1 then I also review the financial statements that
2 result from the entering of that activity to ensure
3 the accuracy of those, of those reports.

4 Q. And the kind of reports that you're
5 referring to would be what?

6 A. Payroll registers, accounts payable,
7 distribution reports, cash receipt journals, journal
8 entries that are made.

9 Q. Okay. You mentioned that one of the,
10 one of the departments that you have oversight
11 responsibilities for at the corporate office involved
12 risk management, is that correct?

13 A. Yes.

14 Q. What is risk management?

15 A. Well, I guess I define it as to
16 include the procurement of insurance, and also the
17 oversight of those that review claims, whether it be
18 internal people or external, and then also assistance
19 with decisions about what risks are retained by the
20 company and what risks are passed down to insurance
21 companies.

22 Q. When you say risks retained, do you
23 mean whether or not Columbia Sussex will self insure
24 with respect to particular risks?

25 A. Yes.

1 Q. Okay. You mentioned that among your
2 responsibilities with respect to the Risk Management
3 Department of Columbia Sussex is the oversight of
4 those, the review claims, I think you had said?

5 A. Yes.

6 Q. Okay. What do you mean by that?

7 A. I would supervise the individuals that
8 handle the settlement of claims, whether it be
9 in-house personnel or outside TPA, or --

10 Q. TPA -- I'm sorry. TPA?

11 A. It's a -- third party administrator.

12 MR. BROWN: Third party administrator.

13 Q. I'm sorry, I cut you off.

14 A. And I would also review cases that are
15 handled by the insurance company directly.

16 Q. On those cases that it handled by the
17 insurance company directly, do you have any authority
18 to direct the resolution of those cases by the
19 insurance company?

20 A. Depends on how our contract is with
21 that insurance company. If it's a self-insured
22 retention I have more authority. If it's a
23 deductible, obviously the insurance company is
24 ultimately responsible under that situation.

25 Q. In the case involving the insurance

1 that's covering this particular civil action, do you
2 have any authority to direct the resolution of that
3 claim?

4 A. I don't remember what policy was in
5 place at the time of this incident, so I'm not sure
6 what type of insurance we had at that time.

7 Q. Okay. In terms of the supervision you
8 provide to the adjustors, both the internal adjustors
9 and the third-party administrators, what is the
10 nature of that supervision, what do you actually do
11 to supervise these folks?

12 A. I ask about the status of the case,
13 you know, how it's proceeding, you know, help them
14 gather information if it's necessary for the
15 investigation of the case.

16 Q. Do you provide any type of review to
17 determine trends of claims against, against Columbia
18 Sussex?

19 A. At times I did. We used to do some
20 analysis of claims, I don't do that currently.

21 Q. During what time frame did you do that
22 type of analysis?

23 A. I really don't remember.

24 Q. Why did you stop?

25 A. My responsibilities changed slightly

1 with regard to insurance.

2 Q. Is there somebody else that performs
3 that type of analysis for Columbia Sussex at the
4 present time?

5 A. Currently it's -- we have a risk
6 manager that is in the process of doing that kind of
7 a review, yes.

8 Q. And who is that risk manager?

9 A. His name is Frank Harrison.

10 Q. And how long has he been performing
11 these types of reviews for Columbia Sussex?

12 A. Since January of this year.

13 Q. Had you been performing those types of
14 reviews up until January of 2007?

15 A. No.

16 Q. Had you been performing reviews of
17 claims back in 2002?

18 A. I really don't remember.

19 Q. In order to analyze claims to
20 determine what types of trends there are, what types
21 of materials would you typically analyze?

22 A. Summaries of claims history, number of
23 incidences at each of the properties, areas where the
24 incidences occurred.

25 Q. When you say "area where the incidents

1 I thought you were talking about the
2 Reynolds case.

3 A. The Kepner case was a slip and fall.

4 Q. Oh, okay. All right. And the
5 Reynolds case was an alleged sexual assault, you say?

6 A. Yes.

7 Q. Okay. And of course the case that
8 brings us here today, the Genereux case, is an
9 alleged sexual assault, correct?

10 A. Yes.

11 Q. Were there any other claims that you
12 recall reviewing that involve alleged sexual
13 assaults?

14 A. I don't remember any specifically, I'm
15 sure there was. I mean I've been with the company
16 for 18 years, I'm sure during that period of time we
17 had another one somewhere.

18 Q. Do you recall any other hotels where
19 there are alleged victim sexual assaults besides the
20 Westin Casuarina?

21 A. I don't recall.

22 Q. Okay. Earlier you had mentioned that
23 one of the reasons for, for reviewing claims was to
24 determine if there were any areas that required
25 corrective action, is that correct?

1 Q. Okay. And did you continue monitoring
2 that particular parking lot because of its history to
3 take other steps as you felt the need arose?

4 MR. BROWN: Is that directed to him
5 individually?

6 MR. ITZKOWITZ: No, I'm sorry, the
7 corporation.

8 A. Yes, we continued to monitor it.

9 Q. Okay. Had you performed any type of
10 analysis relating to the claims history of the Westin
11 Casuarina?

12 A. I think I mentioned before that I
13 don't remember. I'm -- my recollection is that it
14 would have been included in our analysis, but I don't
15 recall it specifically.

16 Q. When you say "it would have been
17 included in our analysis," what do you mean?

18 A. We reviewed claim activity for every
19 hotel that we either manage or have an Administrative
20 Services Agreement with. So it would have been part
21 of the data base so-to-speak of properties that we
22 reviewed.

23 Q. Was any distinction made in the way
24 you performed the review with respect to the Westin
25 Casuarina because of the nature of the relationship

1 before Mr. Jacop?

2 A. Rich Fitzpatrick, and he also had the
3 title CFO.

4 Q. Have you been reporting to him since
5 the time of the Genereux incident back in May of 2002
6 or have there been other folks involved, as well?

7 A. There's been other folks involved.

8 Q. Who else have you reported to during
9 that time frame?

10 A. I don't recall exactly. There was --
11 When I first started the vice president of finance
12 was a person by the name of Joe Marquet, and then
13 somewhere in the early 2001 or 2002, I don't remember
14 exactly what year, Mr. Marquet left the company, and
15 a person by the name of Edward Rofes became vice
16 president of finance and I reported to him.

17 Q. Okay. And besides Mr. Marquet,
18 Mr. Rofes, Mr. Fitzpatrick and Mr. Jacop, have there
19 been other folks that you reported to?

20 A. No.

21 Q. In performing your responsibilities
22 with respect to risk management, do you have any
23 involvement with determining policies relating to
24 security or loss prevention for Columbia Sussex?

25 A. That's an operational area, I

1 generally don't have any authority to change how we
2 operate a hotel. I can make suggestions, but that's
3 up to the operations people.

4 Q. Okay. Within the operation -- I'm
5 sorry. Is the Columbia Sussex Corporation set up so
6 that operations is a division or department or
7 whatever you want to call it of the corporation?

8 A. I'm not sure what you mean by
9 "division or department." There are individuals
10 that, you know, the General Manager of the hotels and
11 they're -- they have district managers or Vice
12 President of Operations that they report to. And
13 they report to our Executive Vice President of
14 Operations. I wouldn't call those a separate
15 department. There's a separate line of reporting I
16 think, is probably a better way to describe it.

17 Q. Okay. And just --

18 MR. BROWN: And, again, that's --
19 you're giving a response in general.

20 MR. ITZKOWITZ: In general.

21 A. In general as it relates to Columbia
22 Sussex.

23 Q. Right. Okay. And just to make sure I
24 got that hierarchy right. Who is it that reports to
25 the Executive Vice President of Operations, is it the

1 District Manager?

2 A. District Manager, yes.

3 Q. And who do they oversee?

4 A. Who does the District Manager oversee?

5 Q. Right.

6 A. Generally we geographically group
7 hotels so that they have an area that they oversee
8 that's relatively close geographically so they can
9 get to the properties easier.

10 Q. Okay. And then so at that -- within
11 the geographic area would be the hotel manager,
12 General Manager?

13 A. There would be a General Manager that
14 actually is on site at the property, you know, day in
15 and day out. That person has the ultimate
16 responsibility for how the hotel is operated.

17 Q. Okay. With respect to security and
18 loss prevention, is there a separate group of
19 individuals that handles that particular function, or
20 does it go also from the, through the General Manager
21 to the District Manager?

22 A. It goes through the General Manager to
23 the District Manager of Operation. There's no
24 separate security department.

25 MR. BROWN: And again you're speaking

1 Casuarina?

2 A. Yes.

3 Q. Was there a district manager or some
4 other type of -- No -- Was the district manager
5 responsible for the Cayman Island hotels, for
6 Columbia Sussex?

7 A. I'm not sure how to answer that.

8 There's no district manager since that I have, that
9 we had, that I've explained previously with regard to
10 the U.S. based operation Columbia Sussex.

11 The manager at the Westin Casuarina,
12 prior to the sale of the Courtyard, oversaw that
13 operation. So he oversaw the General Manager of the
14 Courtyard Grand Cayman. So was he considered to be a
15 district manager, maybe, I don't know, we didn't give
16 him that title.

17 Q. Did the manager of the Westin
18 Casuarina also oversee the General Manager of the
19 Marriott Grand Cayman?

20 A. I'm not sure if he was there during
21 that time period. I believe at least for a portion
22 of the time he did.

23 Q. And what was the name of the manager
24 that you're referring to from the Westin Casuarina?

25 A. His name is Dan Szydiowski.

1 Q. Is he the manager at the present time?

2 A. Yes.

3 Q. Do you know how long he's been the
4 manager?

5 A. I don't know the exact time period.

6 Q. Was he the manager at the time of the
7 incident involving Ms. Genereux?

8 A. I think he was, but I don't -- I'm not
9 positive.

10 Q. Was there somebody that Mr. Szydiowski
11 reported to at Columbia Sussex in terms of monitoring
12 what was going on on the properties in the Cayman
13 Islands?

14 A. I'll have to be very careful that not
15 at Columbia Sussex. Mr. Yung as President of Galleon
16 Beach Resort Limited, which owns the Westin
17 Casuarina, Mr. Szydiowski would have reported to
18 Mr. Yung in that capacity.

19 Q. Was there anybody who served an
20 intermediate level of management position between
21 Mr. Yung and Mr. Szydiowski with respect to the
22 Cayman properties?

23 A. No.

24 Q. At the present time, how many Westin
25 hotels as opposed to other brands of hotels does

1 Columbia Sussex has a relationship to of some type?

2 A. I think there is -- I think there's
3 five currently.

4 Q. Okay. Does that -- Are you including
5 the Casuarina in that group?

6 A. Yes.

7 Q. Have there been more Westins at
8 different points in time than there are presently?

9 A. Yes.

10 Q. And do you know what the maximum
11 number of Columbia Sussex had a relationship with at
12 any point in time?

13 A. I think now is the maximum.

14 Q. Okay. And in terms of the Westin as
15 opposed to different brands of hotels, what type of
16 relationship does Columbia Sussex have with Westins?

17 A. I'm not sure I understand your
18 question.

19 Q. Well you had mentioned earlier that
20 there was an Administrative Services Agreement that
21 applied to the Westin Casuarina, correct?

22 A. That's correct.

23 Q. Okay. With respect to the other four
24 or so Westins that Columbia Sussex has a relationship
25 with, what's the nature of that, with those

1 A. Both.

2 Q. Okay. And since we're limiting these
3 questions just to the Westin hotels that Columbia
4 Sussex has a management agreement with, in terms of
5 the procedures and policies for those Westin hotels,
6 does Columbia Sussex have to follow the policies and
7 procedures of the Westin licensing company or Westin
8 hotel company, whatever they call themselves?

9 A. The different brands, Westin being
10 one, has a set operating policy that we have to
11 comply with, but there's areas that that doesn't
12 address or maybe we want to go beyond that in terms
13 of our control. So it would be differences between
14 or other areas that aren't covered by that Westin
15 management or Westin operating manual.

16 Q. Okay. All right. Just to make sure
17 that I understand. In other words, to the extent
18 that there is a policy existing in the Westin
19 manuals, Columbia Sussex is obliged by its
20 relationship with Westin to carry out those policies
21 as minimal levels of service. If Columbia Sussex
22 chooses to provide additional service over and above
23 what Westin requires, Columbia Sussex can do that?

24 A. Yes, or it isn't just services, it's,
25 you know, control procedures. You know, we, you know

1 the Westin manual is just as an example, probably
2 doesn't go into any detail about how the hotel makes,
3 you know, controls cash. We would put in policies
4 and procedures how cash is to be deposited and
5 controlled, or how bills for services rendered to the
6 hotel are approved. The Westin manual wouldn't even
7 address that.

8 The Westin manual is specifically
9 address guest service and how the hotel appears, its
10 appearance of the hotel. And our, the Columbia
11 Sussex's policies and procedures would address all
12 the other myriad of areas that affect how you run a
13 business.

14 Q. Okay. With respect to the Westin
15 hotels that Columbia Sussex has a relationship to
16 pursuant to these Hotel Management Agreements, did
17 those agreements make Columbia Sussex the owner of
18 the hotel?

19 A. No.

20 Q. Okay. Do those agreements make
21 Columbia Sussex the operator of the hotel, manager of
22 the hotel, as it were? .

23 A. Yes.

24 Q. One of the documents that had been
25 produced in discovery in the case, I believe by the

1 Westin Starwood defense, was a document called a
2 System License Agreement between Westin Starwoods and
3 the Westin Casuarina. Did Columbia Sussex sign on to
4 System License Agreements for the other hotels that
5 it managed for Westin or was there a different type
6 of a contract?

7 MR. BROWN: I object to the form of
8 the question. I think you made a
9 representation that there was an agreement
10 between Westin Casuarina --

11 MR. ITZKOWITZ: Yeah.

12 MR. BROWN: -- and Westin license, and
13 then you've asked whether Columbia Sussex
14 signed on to others, which would implicit
15 in your question is that they signed on to
16 what you said they haven't signed on to.

17 MR. ITZKOWITZ: Oh, thank you for
18 pointing that out to me. Let me phrase
19 that.

20 Q. Had Columbia Sussex signed any System
21 License Agreements with the Westin company in terms
22 of the operation of any of the other Westin hotels
23 not Columbia, not the Westin Casuarina?

24 A. I believe the license agreement was
25 signed by an officer of the entity that owns the

1 hotel, not by Columbia Sussex.

2 Q. Okay. So just to make sure I
3 understand then, as far as you're aware, Columbia
4 Sussex Corporation was not a signatory to any systems
5 license agreement with the Westin Licensing Company
6 or its --

7 A. Yes, to my understanding.

8 Q. Okay. Did Columbia Sussex Corporation
9 execute any types of documents with the Westin
10 Licensing Company or any of the various corporate
11 names that it, that are affiliated with it in terms
12 of operating any of the Westin hotels that Columbia
13 Sussex operates?

14 A. I don't believe there is any agreement
15 that Columbia Sussex as a separate corporation
16 signed.

17 Q. Okay. So the management agreements
18 between -- the management agreements that Columbia
19 Sussex would have signed onto would have been with
20 the owner of the hotel, but not with the Westin
21 company?

22 A. That's correct.

23 Q. Okay. But if I understood your
24 earlier testimony, I just want to make sure I'm
25 right, by executing those agreements between Columbia

1 Sussex and the owner of the hotel, Columbia Sussex
2 agreed to enforce the Westin policies as minimal
3 operating policies for the hotel?

4 A. That would have been one of the
5 provisions in the Hotel Management Agreement to
6 ensure compliance with the franchise agreement, which
7 was that licensing agreement.

8 Q. And if I understand you correctly, the
9 Hotel Management Agreements between Columbia Sussex
10 and the owners of the different Westin hotels that
11 Columbia Sussex would be managing, would include the
12 terms of the Westin manual that would apply, for
13 example, to security or to loss prevention, correct?

14 MR. BROWN: Can I have that read back?

15 (The pending question was read back.)

16 MR. ITZKOWITZ: Let me phrase it, let
17 me save you the aggravation on that one.

18 Q. Under the Hotel Management Agreements
19 that Columbia Sussex signed with the owners of the
20 different Westin hotels, would Columbia Sussex be
21 responsible for seeing that the hotel complied with
22 those provisions of the Westin manual relating to
23 security?

24 A. It wouldn't mention specifically, bit
25 it -- it says that they're responsible for compliance

1 with Westin standards, and if that included security,
2 then, yes.

3 Q. Okay. Great. Now you had mentioned
4 that the agreements with the hotels in the Cayman
5 Islands included particularly Westin Casuarina and
6 Administrative Services Agreements as opposed to
7 Hotel Management Agreements?

8 A. Yes.

9 Q. What was the distinction and the
10 service provided by Columbia Sussex between the
11 service managing -- the Administrative Services
12 Agreement, excuse me, and the Hotel Management
13 Agreement?

14 A. Well the Administrative Services
15 Agreement, in my mind, is more, you know, ministerial
16 or I'm not sure that's the right word. It involves,
17 you know, keeping track of records, paying bills,
18 preparing financial statements, doing administrative
19 things as opposed to Hotel Management Agreement,
20 which addresses hiring and firing, compliance with
21 its manual of the franchisor, operation, direct
22 oversight of operations. So they're, they're really
23 pretty dramatically different in terms of level of
24 services provided.

25 Q. Okay. In terms of paying the bills,

1 Casuarina from all the other different funds that
2 Columbia Sussex has access to?

3 A. Yes, they are kept separate.

4 Q. Are the funds from the accounts pulled
5 for any purpose?

6 MR. BROWN: Objection to the form.

7 A. The --

8 MR. BROWN: What accounts?

9 MR. ITZKOWITZ: Oh, okay.

10 Q. Are the Galleon Beach funds pulled
11 with funds from hotels that Columbia Sussex has a
12 relationship to for any purpose?

13 A. No.

14 Q. Okay. Am I correct in understanding
15 that pursuant to the Administrative Services
16 Agreement Columbia Sussex procures insurance on
17 behalf of the Westin Casuarina?

18 A. Yes.

19 Q. Okay. Focusing just on the
20 procurement of insurance, just by way of example.
21 Are the insurance policies that are purchased for the
22 Western Casuarina purchased as -- along with policies
23 purchased for other hotels that Columbia Sussex has a
24 relationship to in order to maximize the discounts,
25 for example, or to lower the cost of purchasing the

1 insurance?

2 A. Yes, they are. Exposure is included
3 with all the other exposures.

4 Q. And can you explain what you mean by
5 that?

6 A. When we negotiate with an insurance
7 company to provide property insurance, for example,
8 the data that's provided to the insurance company
9 includes data on the Westin Casuarina. And as apart
10 of that insuring agreement Galleon Beach Resort
11 Limited will be listed as an additional insured on
12 that policy.

13 Q. Okay. And if I understood correctly,
14 the part of the reason for making that kind of
15 arrangement is to maximize purchasing power in terms
16 of what you purchase for insurance coverage, am I
17 right?

18 A. I'm not sure what you mean by
19 "maximize purchasing power," but, yes, it's done to
20 try to provide a greater pool of risk that is then --
21 When you negotiate with the insurance company you
22 have more buying power, so-to-speak.

23 Q. Okay. Great. Is there any other area
24 in which any services that are provided for the
25 Westin Casuarina by Columbia Sussex are combined with

1 performs for the Westin Casuarina under the
2 Administrative Services Contract?

3 A. Yes. We will maintain copies of
4 contracts for that property and monitor, you know,
5 termination dates and renewal dates.

6 Q. And what types of contracts are you
7 referring to?

8 A. Maintenance contracts, be one example,
9 utility contracts, lease agreements for copiers and
10 things like that.

11 Q. Okay. Are there any contracts
12 relating to the provision of security services at the
13 Westin Casuarina that Columbia Sussex performs a
14 record keeping function with respect to?

15 A. There might be, I don't recall
16 specifically if there's a contract with an outside
17 security service.

18 Q. Does Columbia Sussex provide any
19 record keeping function with respect to Westin
20 Casuarina employees?

21 A. Yes. We maintain personnel files for
22 Westin employees.

23 Q. And where are those files maintained?

24 A. They're maintained in our offices in
25 Ft. Mitchell.

1 Q. Oh. Are there duplicative copies down
2 in the Cayman Islands?

3 A. There might be some that are
4 maintained down there, I don't know though, you know,
5 what, to what extent they keep duplicate copies.

6 Q. Okay. In addition to physically
7 hanging onto the files here in Kentucky, does
8 Columbia Sussex provide any type, any other type of
9 service with respect to the personnel files?

10 A. Again, I'm not sure exactly what you
11 mean by that. I mean we monitor, you know, vacation
12 taken, so, you know, so we know how much more
13 vacation somebody has to take. We monitor sick days,
14 and then -- the kind of things that need to be
15 monitored in connection with a personnel function.

16 Q. Okay. And that's sort of what I was
17 wondering. For example, if there was a problem with
18 an employee as perceived by the management by there
19 at the hotel in the Cayman Islands, would you keep
20 tabs of the documentation that were maintained in the
21 files with respect to that employee?

22 A. I believe discipline -- that's what
23 you're asking for, discipline records are maintained
24 at the property locally. Home office here does not
25 maintain records of discipline.

1 Q. Does the home office get copies of the
2 disciplinary files?

3 A. I don't believe so.

4 Q. Okay. And perhaps as sort of the
5 inverse side of discipline, are files monitored up
6 here with respect to promotions or commendations for
7 Westin Casuarina employees?

8 A. To the extent there's a pay rate
9 change, that document is kept up here.

10 Q. Okay. Would pay rate change documents
11 also cover, for example, if a person was promoted to
12 a -- from one level of employment up to a higher
13 level within the same department or to a management
14 function or something like that?

15 A. Yes.

16 Q. Are the payroll checks for the
17 employees in the Caymans issued from here in
18 Kentucky?

19 A. Yes.

20 Q. Does Columbia Sussex use some type of
21 payroll service to pay employees of the various
22 hotels, or does it do that in-house?

23 A. It does it in-house.

24 Q. As far as you're aware, just from your
25 knowledge of the personnel files and the payroll

1 information up here, are there employees at the
2 Westin Casuarina whose function is to provide
3 security services on the property?

4 MR. BROWN: Can I have that read back?

5 (The pending question was read back.)

6 A. I don't recall seeing anybody that is
7 in that category, but that doesn't mean that there
8 isn't somebody, but I don't recall.

9 Q. Okay. And earlier in the different
10 context we had talked about coding bills and things
11 like that. Are there also codes from personnel files
12 that would indicate what department an employee
13 worked in in the hotel?

14 A. Yes. Every employee is given a
15 specific job code.

16 Q. Okay. Are the job codes for the
17 Westin Casuarina the same job codes used for other
18 hotels that Columbia Sussex manages?

19 A. For the most part, there might be some
20 special ones that they need, but I think for the most
21 part they're the same.

22 Q. Okay. So that stuff that would apply
23 to all the hotels like housekeeping that would be the
24 same codes?

25 A. Yes.

1 Q. Okay. I had asked you a little while
2 ago whether you were aware of there being employees
3 at the Westin Casuarina who has security functions.
4 Are there employees who are designated as loss
5 prevention or risk management employees at the Westin
6 Casuarina, as far as you know?

7 A. No, I don't believe so.

8 Q. I'm gonna take you a step back from
9 this whole series of things we've been talking about
10 with the, under the Administrative Services
11 Agreement.

12 From what you've been describing so
13 far, obviously there are different type of agreements
14 that Columbia Sussex has with different hotels. What
15 determines what type of an agreement Columbia Sussex
16 will enter with a hotel?

17 A. If there is a direct or indirect
18 ownership interest by Columbia Sussex and the
19 property, generally there's a Hotel Management
20 Agreement. If there's no ownership interest between
21 the property and Columbia Sussex, generally it's an
22 Administrative Services Agreement.

23 Q. And is there a person at Columbia
24 Sussex who makes the final determination with respect
25 to what type of agreement will be entered into for

1 conditions on the property?

2 A. I don't recall if we had a form or
3 not, I just don't recall.

4 Q. Okay. But if there was something that
5 caught their eye they would make recommendations for
6 the -- to make changes to the property, is that
7 correct?

8 A. Yes, they would point out if there
9 need to be a change to the property or a condition
10 that needed to be corrected.

11 Q. Okay. And during the course of these
12 walk throughs, would they be examined for issues
13 relating to hotel security?

14 A. They might notice whether, you know,
15 the door to a maintenance area should be locked so a
16 guest doesn't go in there. That's kind of security
17 related.

18 Q. Um-hum.

19 A. Or they might, you know, notice
20 whether there's, any lights are out in the parking
21 lot, which might be security related. So there's --
22 there's probably things that could be considered
23 security related that they look for.

24 Q. Okay. You had mentioned earlier when
25 we were talking about the New York property about one

1 of the changes made was to put a fence around the
2 property and put gates into control access in and out
3 of the parking lot, correct?

4 A. Yes.

5 Q. Would that type of parameter security,
6 for lack of a better word, be one of the types of
7 things they would look for in these walk throughs?

8 A. Not in that particular case, not
9 unless there was an indication from a review of the
10 incidences. We wouldn't normally put a fence around
11 the property. That is unusual to do that.

12 Q. Okay. I understand that. But what
13 I'm asking is: Would they examine whether they felt
14 there was a need, for example, for a fence, not that
15 they necessarily determined there was?

16 A. That wouldn't be done from the on-site
17 visit, that would be done from a review of Incident
18 Reports.

19 (Short break was taken.)

20 Q. During these walk throughs would the
21 Columbia Sussex risk management employee also examine
22 the staffing levels for security purposes at the
23 hotel?

24 A. Generally not.

25 Q. Was there anybody else that would

1 conduct that type of an interview?

2 MR. BROWN: You're saying at Columbia
3 Sussex?

4 MR. ITZKOWITZ: At Columbia Sussex,
5 yeah.

6 A. The District Manager might review that
7 with the General Manager, what their staff -- They
8 review staffing levels, in all positions, so they
9 would -- You know, security is apart of that staff,
10 they would review that one.

11 MR. BROWN: And again that was a
12 general question.

13 MR. ITZKOWITZ: That was a general
14 question, yes.

15 Q. Okay. I just want to make sure that I
16 understood you correctly and I apologize. There is
17 not a separate security department within Columbia
18 Sussex that handle security related issues?

19 A. No, there's no separate security
20 department, no.

21 Q. Okay. Would there be somebody within
22 the corporate hierarchy at Columbia Sussex, and again
23 general question. Would there be somebody in the
24 corporate hierarchy at Columbia Sussex that would
25 review the security needs of the individual hotels

1 that Columbia Sussex had a relationship with?

2 A. Again, not any specific individual, it
3 would go through the General Manager reporting to the
4 District Manager. That would be the only people that
5 would, you know, that have any input on that.

6 Q. And then from the District Manager it
7 would go up to the Vice President of Operations?

8 A. Yeah.

9 Q. Okay. So is it correct then that in
10 terms of determining the security needs of the
11 individual hotel that determination would be made by
12 the General Manager?

13 A. Yes, in consultation with our District
14 Manager.

15 MR. BROWN: And, again, although it --
16 may not be repeated, this is a general
17 question --

18 MR. ITZKOWITZ: Yes.

19 MR. BROWN: -- a general answer.

20 MR. ITZKOWITZ: Yes.

21 Q. Okay. And so in terms of insuring
22 that the security needs of a hotel were being
23 satisfied, within the corporation folks that would do
24 that would be the District Manager and above him the
25 Executive Vice President of Operations?

1 A. Yes.

2 MR. BROWN: I guess I feel compelled
3 to just put in that these general questions
4 not being specified to the property in the
5 Cayman Islands at the Galleon Beach Resort
6 do not necessarily apply to that property.

7 MR. ITZKOWITZ: Understood,
8 understood.

9 Q. Okay. Given the nature of the
10 relationship between the Westin Casuarina and
11 Columbia Sussex that you've been describing for us,
12 is there anybody at Columbia Sussex who reviews the
13 security provisions at the Westin Casuarina?

14 MR. BROWN: Objection to the form.

15 Q. Let me simplify that. Is there
16 anybody at the Columbia Sussex Corporation who
17 reviews the security needs of the Westin Casuarina?

18 A. Mr. Yung in his capacity as president,
19 would review that with the General Manager.

20 MR. BROWN: In his capacity as
21 President of Galleon Beach.

22 A. In his capacity as President of
23 Galleon Beach, yes.

24 Q. Okay. Do you know what if any type of
25 training Mr. Yung has in security matters, hotel

1 been talking about, were they located in
2 Ft. Mitchell, Kentucky?

3 A. Yes.

4 Q. Okay. So when they would visit the
5 hotels, wherever the hotel happened to be located,
6 would it be Columbia Sussex that would pay their way
7 as a business expense?

8 A. Yes.

9 Q. Okay. And so that would include all
10 the airfare and hotel room and whatever else?

11 A. Yes.

12 Q. You had mentioned earlier in the
13 deposition that in addition to being an officer at
14 Columbia Sussex you're also an officer of Galleon
15 Beach, is that correct?

16 A. That's correct.

17 Q. And what office do you hold at Galleon
18 Beach?

19 A. Secretary treasurer.

20 Q. Is it the same office you hold for
21 Columbia Sussex?

22 A. Yes.

23 Q. Are there any other folks who hold --
24 Well, Mr. Yung, I take it, also holds positions, the
25 same position both at Galleon Beach and at Columbia

1 Sussex, correct?

2 A. That's correct.

3 MR. BROWN: Objection to the form,
4 just to clarify it. He's president of
5 Galleon Beach Resort Limited and he's
6 president of Columbia Sussex. I just
7 didn't want there to be any clutter in the
8 record as to calling it the same position.

9 MR. ITZKOWITZ: Fair enough. Do you
10 need me to rephrase it to clarify it or are
11 you content with that?

12 MR. BROWN: No, he said fair enough,
13 so we -- just an understanding.

14 Q. Okay. Are there any other employees
15 of Columbia Sussex Corporation who were also, also
16 hold a position of Galleon Beach Resort Limited?

17 A. Yes.

18 Q. Who else?

19 MR. BROWN: Are we talking currently
20 or are you putting back in time or is there
21 any time on it?

22 MR. ITZKOWITZ: Why don't we do both.

23 A. Currently I believe John Jacop, the
24 CFO of Columbia Sussex is also CFO of Galleon Beach
25 Resort Limited.

1 Q. Okay. Are there any others besides
2 Mr. Jacop, you and Mr. Yung who hold positions?

3 A. Currently?

4 Q. Currently.

5 A. Not that I can recall.

6 Q. Okay. And what about in the past,
7 have there been other employees who hold positions in
8 both?

9 A. They -- Mr. Jacop's predecessors as
10 CFO would have held both positions. Ed Rofes and Joe
11 Marquet had positions at both.

12 Q. Would the title that they held at
13 Galleon Beach Resort Limited be the same title that
14 they had held at Columbia Sussex Corporation?

15 A. I believe they're essentially the
16 same, there might be some small difference.

17 Q. Okay. And would their functions that
18 the various individuals perform for Galleon Beach?
19 Let me stop at that.

20 MR. BROWN: I'm sorry, was there a
21 question.

22 MR. ITZKOWITZ: No, let me rephrase.

23 I apologize.

24 Q. You know, why don't we limit it for
25 the moment. Do you perform any particular functions

1 for Galleon Beach?

2 A. In my capacity as secretary treasurer
3 I review, you know, monthly financial statements, and
4 I will approve a contract or a bill in certain
5 situations. You know, in regard to insurance I'll
6 determine what level of self insurance or retention
7 that we have. I might also set, you know,
8 administrative policies, in terms of how information
9 is reported or what level approval is needed.

10 Q. When you say "what level approval is
11 needed," what do you mean by that?

12 A. Whether a bill can be approved by just
13 a general manager or whether it requires an
14 additional approval of an officer. Mr. Yung has to
15 approve it or I should approve it or John Jacop would
16 approve it.

17 Q. Okay. Any -- Are there any other
18 functions that you perform for Galleon Beach?

19 A. Not that I can think of off the top of
20 my head.

21 Q. Okay. With respect to approving
22 contracts, are there any contracts that you have
23 approved with respect to security at the Westin
24 Casuarina?

25 A. I don't recall signing any security

1 agreements for Westin Casuarina.

2 Q. Okay. As far as you know, are there
3 any outside vendors that provide security services at
4 the Westin Casuarina?

5 A. I'm not aware of any presently, I know
6 there have been outside security services used.

7 Q. Do you know what security services
8 have been used?

9 A. No, I don't know what the name of the
10 firm is.

11 Q. Do you know whether any outside
12 security services have been used as of the time of
13 the incident with Ms. Genereux on May of 2002?

14 A. I really don't have any knowledge,
15 recollection on that.

16 Q. Do you know why the outside security
17 services were discontinued?

18 A. Again, I don't know the circumstances
19 for that.

20 Q. Do you know when they were, when they
21 ended?

22 A. No, I don't. To clarify, I don't know
23 if they've ended either.

24 Q. Thank you. Have you personally been
25 down to the Westin Casuarina?

1 any other recommendations or instructions you've made
2 to the General Manager of the Westin Casuarina with
3 respect to any work you had done pursuant to the
4 service agreement?

5 A. I'm sure there has been over the
6 years. I don't recall specifically what those might
7 have been.

8 Q. Okay. Do you recall any occasions
9 when having a made recommendation to the General
10 Manager pursuant to the service agreement, the
11 General Manager refused to comply with your
12 recommendations?

13 A. Maybe we need to step back. My
14 directions to the General Manager would have been
15 done in my capacity as secretary treasurer of Galleon
16 Beach Resort Limited, not necessarily in connection
17 with my providing services under the Administrative
18 Services Agreement.

19 Q. Okay. Would all of the
20 recommendations to the General Manager have come
21 either from you or from Mr. Yung?

22 A. It would have come from either of us
23 or someone that one of us designated to give
24 direction.

25 Q. Okay. And in terms of the folks that

UNITED STATE DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Civil Action NO. 05-CV-10879-JLT

KIMBERLY GENEREUX,)
Plaintiff,)
VS.)
COLUMBIA SUSSEX CORPORATION,)
ET AL,)
Defendants.)

- - -

Deposition of THEODORE R. MITCHEL, a witness, was called on behalf of the Plaintiff as upon cross-examination, pursuant to the Rules of Civil Procedure, commencing at 9:30 a.m., on Friday, September 7, 2007, at the Sheraton Cincinnati, in the "A" Armstrong Room at 2826 Terminal Drive, Hebron, Kentucky, before Terence M. Holmes, professional court reporter, and notary public within and for the Commonwealth of Kentucky.

- - -

1 you would have designated, would those have been
2 Columbia Sussex employees or would they have been
3 Galleon Beach employees or both?

4 A. They could have been both.

5 Q. Were there employees besides the group
6 of officers that you had named earlier, were there
7 folks who were both employees of Galleon Beach and
8 Columbia Sussex at the same time?

9 A. No.

10 Q. Okay. All right. And so just to get
11 back to the question I asked a moment ago and sort of
12 clean it up a little perhaps. Were there any
13 employees of Columbia Sussex who were only employees
14 of Columbia Sussex who had made recommendations to
15 the General Manager of the Westin Casuarina pursuant
16 to the service agreement?

17 A. I'll give you an example that maybe
18 clarifies it. Individuals that work for me, I would
19 have given them direction to contact the property,
20 either the General Manager or some other position
21 down there about a particular procedure that I wanted
22 followed as it relates to my position as treasurer of
23 Columbia Sussex.

24 Under our Administrative Services
25 Agreement we don't provide direction to the property

1 management employees direction to tell the employees
2 of the Westin Casuarina to do specific things, I
3 don't recall that.

4 Q. Okay. And in terms of some of the
5 other information that you were talking about earlier
6 when you said you would tell your employees at
7 Columbia Sussex to pass on information to the Westin
8 Casuarina, what types of issues would you have and
9 discuss with the Westin Casuarina?

10 A. Possibly timely submission of deposits
11 to the bank, completeness of reports, you know,
12 approvals of invoices. I can't think of any other
13 specific things.

14 Q. Okay. Well even within that procedure
15 sort of -- what you would be instructing will be
16 procedures as to how to go about doing these
17 different things, when and how to report to the bank,
18 when and how to make deposits, when and how to --

19 A. Yes.

20 Q. -- prepare reports? On any of those
21 occasions when you had instructed your subordinates
22 at Columbia Sussex to pass on those recommendations
23 to the manager of the Westin Casuarina, had the
24 Westin Casuarina refused to carry out those
25 instructions?

1 A. No to my recollection.

2 Q. The agreement makes reference in
3 Paragraph 7 to the relationship between the two
4 corporations, Galleon Beach and Columbia Sussex. And
5 there's a sentence -- I guess it's the second
6 sentence that begins in that paragraph. "This
7 agreement in no way affects any other agreements on
8 other matters between CSC and GBR that do not relate
9 to accounting and/or business management services..."
10 Do you see that, first off?

11 A. Yes.

12 Q. Okay. Are you aware of any other
13 agreements between the two corporations?

14 A. No, I'm not.

15 Q. As part of the business management
16 services that Columbia Sussex would provide under
17 this agreement, would Columbia Sussex monitor to see
18 whether the Westin Casuarina was complying with the
19 requirements of the Westin operating manuals?

20 A. I would say no.

21 Q. Okay. Are you familiar with the
22 System License Agreement between the Westin Casuarina
23 and the Westin licensing company?

24 A. I'm aware that it exist, I don't
25 remember specific provisions in the agreement.

1 Casuarina?

2 A. No, I have not.

3 Q. To your knowledge, does Columbia
4 Sussex Corporation identify any relationship between
5 it and Galleon Beach or it between it and the Westin
6 Casuarina in terms of Columbia Sussex's own public
7 relations or advertising?

8 A. I'm not sure I follow your question.

9 That you're asking under the Administrative Service
10 Agreement does Columbia Sussex arrange for
11 advertising for the Westin Casuarina, the answer is,
12 "yes."

13 Q. Okay. Let me back you up again, I
14 apologize. But I thought I had asked you earlier
15 what types of services Columbia Sussex provided and I
16 don't recall that one having been mentioned. So in
17 addition to arranging advertising, are there any
18 other services that Westin -- that Columbia Sussex
19 does provide for the Westin Casuarina pursuant to the
20 services agreement besides administering records,
21 paying the bills that we had talked about, procuring
22 the insurance and arranging the advertising?

23 A. Again, not that I can recall.

24 Q. Okay. In terms of the advertising,
25 what type of advertising does Columbia Sussex handle

1 for Westin Casuarina?

2 A. I believe it's the placements of
3 advertisements in travel magazines or in airline
4 magazines that are provided to people that fly the
5 different airlines, or possibly the newspaper such as
6 USA Today.

7 Q. Is that a service that Columbia Sussex
8 provides separate from any advertisements handled by
9 the Westin company?

10 A. Yes, this would be in addition to what
11 would be handled by Westin.

12 Q. Okay. And so just to make sure I'm
13 following you correctly. Galleon Beach is actually
14 getting benefit of advertising from both
15 corporations, from the Westin group and from Columbia
16 Sussex?

17 A. No. Columbia Sussex is only arranging
18 for the advertising to be placed. Galleon Beach pays
19 for it.

20 Q. Okay.

21 A. So it's not benefitting from Columbia
22 Sussex placing the advertisements.

23 Q. Well benefitting in the sense that it
24 doesn't have to do itself?

25 A. Just for administration of placing the

1 ad.

2 Q. Okay. Who makes the determination as
3 to whether or not ads will be placed?

4 A. I believe it's Mr. Yung in
5 consultation with the General Manager.

6 Q. Do any of these ads, as far as you
7 know, identify the relationship between the Westin
8 Casuarina and Columbia Sussex?

9 A. I believe they're silent with regard
10 to that.

11 Q. I'm assuming from the way you've been
12 answering the questions that Mr. Szydiowski as
13 General Manager of the Westin Casuarina is aware of
14 the relationship between the Westin Casuarina and
15 Columbia Sussex?

16 A. Yes, he is.

17 Q. Okay. Do you know whether other
18 employees of the Westin Casuarina are informed of the
19 nature of that relationship?

20 A. I believe it would be done on a
21 need-to-know basis.

22 Q. Have you ever heard of any employees
23 of the Westin Casuarina telling anyone that the
24 Westin Casuarina is owned and operated by Columbia
25 Sussex Corporation?

1 A. I have no knowledge of that ever
2 happening.

3 Q. And I take it from your earlier
4 answers, if they had made that representations that
5 would not be correct?

6 A. That's correct.

7 Q. Do you know whether the Columbia
8 Sussex website identifies the Westin Casuarina as a
9 Columbia Sussex property?

10 A. I believe that property is listed on
11 our, on the website for Columbia Sussex. I'm not
12 aware of how it refers to it.

13 Q. When Columbia Sussex enters into a
14 relationship with a new hotel, do they typically
15 issue press releases about the new endeavor?

16 A. Usually not. It doesn't mean it
17 hasn't happened, but we generally don't issue press
18 releases.

19 Q. Okay. Do you know of any that were
20 issued in connection, for example, with the property
21 out in Las Vegas when Columbia Sussex took over that
22 one?

23 A. Which property are we referring to?

24 Q. Caesar's Tahoe?

25 A. Ceaser's Tahoe is not in Las Vegas,

1 it's in Tahoe, Lake Tahoe, Nevada.

2 Q. I don't have knowledge of Nevada, I
3 apologize.

4 A. I don't recall seeing a press release,
5 but that doesn't mean there wasn't one.

6 (Columbia Sussex Hotel Properties, marked
for identification as Mitchel Exhibit 3.)

7 Q. Mr. Mitchel, I've handed you an
8 excerpt of a page from the Columbia Sussex
9 Corporation website that lists some of the -- what
10 are captioned Columbia Sussex Hotel Properties; do
11 you see that?

12 A. Yes.

13 Q. Okay. This isn't the full website,
14 let me represent, but on the second page of Exhibit 3
15 it does list the properties that are identified as
16 Westin properties; do you see that?

17 A. Yes.

18 Q. And that does include the Westin
19 Casuarina, correct?

20 A. Yes, it does.

21 Q. Okay. There is no indication on there
22 of the fact that Columbia Sussex according to your
23 testimony or actually doesn't own the Westin
24 Casuarina, correct?

25 A. That's correct.

1 Q. And it doesn't indicate that it does
2 not manage or operate the hotel, correct?

3 A. It does not indicate what capacity
4 Columbia Sussex has to do with that property, you're
5 correct.

6 Q. Okay. Do you know why it listed it
7 without indicating it neither owns or operates it?

8 A. No, I don't.

9 Q. This indicates, as well, that there
10 are about eight hotels, Westin hotels that Columbia
11 Sussex has a relationship with, is that correct?

12 A. That's correct.

13 Q. Okay. And earlier you had mentioned
14 that you thought that there were five?

15 A. Yes.

16 Q. Okay. Would it be correct to say that
17 there more likely eight than five?

18 A. Yes.

19 Q. I've just handed you a document we
20 have marked as Exhibit 4, I believe.

21 A. Yes.

22 (Web page, marked for identification
as Mitchel Exhibit 4.)

23 Q. Okay. Let me represent to you this is
24 the page that comes up if you would click on the
25 reference to Grand Cayman -- I'm sorry, to Westin

1 Q. Okay. And other than that, are you
2 aware of anything else that would so indicate?

3 MR. BROWN: Objection. I don't
4 understand anything else in the universe or
5 in the world.

6 MR. ITZKOWITZ: A very good point.
7 I'll withdraw for a minute.

8 (Short break was taken)

9 Q. Mr. Mitchel, if I can just call your
10 attention again to the service agreement. I think we
11 marked it as Exhibit 1.

12 A. Okay.

13 Q. The fellas who signed off on it in
14 addition to you was Joseph Marquet?

15 A. Yes.

16 Q. Am I correct he's an officer of both
17 the corporations, is that correct?

18 A. At that time, yes, he was.

19 Q. So on the second page of Exhibit 1
20 Mr. Marquet had signed it as vice president of
21 Finance for Columbia Sussex Corporation. On the
22 third page Amendment No. 1 without identifying his
23 title on behalf of Galleon Beach Resort Limited. Do
24 you see that?

25 A. Yes.

1 Q. Okay. That's not a typo, he signed in
2 the correct capacity in both places?

3 A. Yes.

4 Q. The System License Agreement that we
5 marked earlier, I think it may have been Exhibit 3.

6 A. Yes.

7 Q. Again, I apologize. Have you reviewed
8 that document on behalf of Galleon Beach before it
9 was signed?

10 A. Well, I don't recall if I signed it, I
11 probably reviewed it, although it looks like
12 Mr. Marquet signed it, so I might not have reviewed
13 it.

14 Q. Okay. And as you're sitting here now,
15 do you have any recollection of having reviewed it?

16 A. Not really.

17 Q. Earlier you mentioned that there was
18 advertising that Columbia Sussex administered on
19 behalf of the Westin Casuarina that was in addition
20 to the advertising that was done by Westin licensing
21 company of the Westin hotels?

22 A. Yes.

23 Q. The advertising that's done that would
24 include the Westin Casuarina in the brochures and
25 websites and things produced by Westin, is that

1 that?

2 A. Yes.

3 Q. Okay. The job categories start off
4 with Corporate Manager and Risk Manager, then the
5 third one is the Hotel General Manager?

6 A. Yes.

7 Q. In the case of the Westin Casuarina,
8 was there anybody who would fill in those first two
9 categories, the Corporate Manager and the Risk
10 Manager?

11 A. Well I would have filled in the, I
12 would have filled in Corporate Management
13 responsibility, and either myself or people at my
14 direction would have filled in the Risk Manager
15 responsibility.

16 Q. Okay. So in terms of the items listed
17 in this Section 2, were you the one then that
18 established the intent and direction of the safety
19 policy that would be indicated in the first bullet?

20 A. Yes.

21 Q. And how did you do that?

22 A. By providing this manual.

23 Q. Was there anything else that you did
24 besides providing the manual?

25 A. No.

1 Q. Okay. The second one, the risk
2 manager researches, writes and updates and the loss,
3 the Safety & Loss Prevention Manual. Were you
4 involved in any way in reviewing or updating this
5 particular document?

6 A. Yes.

7 Q. How so?

8 A. I reviewed it.

9 Q. Okay. Was that at the time that you
10 told the General Manager to comply with it?

11 A Would have been before it was issued.

12 Q. Okay. When you reviewed the manual,
13 did you do that on behalf of Columbia Sussex or was
14 that something you did for Galleon Beach Resort with
15 respect to the Westin Casuarina?

16 A. Again, we're splitting hairs, I mean
17 with -- I have two roles, one is treasurer of
18 Columbia Sussex, one is treasurer Galleon Beach.
19 Some of the things I do I do once, but it's on behalf
20 of both companies. So the fact that I reviewed and
21 updated a safety manual for Columbia Sussex and then
22 directed people to communicate that update to the
23 people in, at Galleon Beach, I've done it in my
24 capacity as an officer of Galleon Beach.

Q. Okay. All right. But you actually

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1 did review this in your capacity as an officer of
2 Columbia Sussex, as well?

3 A. Yes.

4 Q. Okay. Who wrote the manual?

5 A. The actual writing of the manual would
6 have been done by individuals within my risk, our
7 risk management Columbia Sussex Risk Management
8 Department.

9 Q. Okay. Was there anybody from the
10 operations division that was involved in contributing
11 to the manual?

12 A. We might have consulted with some
13 operations people, but I don't believe that anybody
14 from operations was involved in the writing of the
15 manual.

16 Q. Okay. And I apologize, I am -- I
17 apologize, I just want to make sure that I've got
18 this right. Putting aside anything having to do with
19 the Westin Casuarina, the manual itself is written
20 under your direction by employees who answered to you
21 in the Risk Management Department?

22 A. Yes.

23 Q. And you reviewed the manual for the
24 entire Columbia Sussex corporation?

25 A. Yes.

1 Q. And did you make some, for example,
2 the updates that appear in the document at different
3 places?

4 A. Yes. Somebody under my direction
5 would have done those updates, yes.

6 Q. Okay. And you reviewed what they
7 prepared and then approved it?

8 A. Yes.

9 Q. Okay. And that was all done in the
10 capacity of your responsibilities for Columbia Sussex
11 Corporation, correct?

12 A. Correct.

13 Q. Okay. And having already done it, you
14 then instructed the Westin Casuarina to comply with
15 it?

16 A. Yes.

17 Q. Thank you. Okay. The third item on
18 this section relates to the responsibilities of the
19 hotel General Manager?

20 A. Yes.

21 Q. And the first of those is to read and
22 assimilate the loss prevention, the Safety & Loss
23 Prevention Manual. Had anybody in the Risk
24 Prevention Department or you personally done anything
25 to insure that the General Manager of the Westin

1 Casuarina had read and assimilated this manual?

2 A. No, I had not.

3 Q. The second item there says the hotel
4 General Manager is to "educate the staff on the need
5 to follow the safety guidelines, conduct accident
6 investigation, and prompt reporting of accidents and
7 incidents, and follow-up." Had you done anything to
8 ensure that the General Manager had provided that
9 educational function?

10 A. Other than the fact that Incident
11 Reports are prepared and prepared completely, but
12 beyond that, no.

13 Q. Okay. And as I understand in the case
14 of Ms. Genereux, they actually hadn't prepared
15 Incident Reports, correct?

16 A. That's my understanding that an
17 Incident Report was not prepared at the time of the
18 incident.

19 Q. Okay. The third item under General
20 Manager as he appoints key personnel for duty such as
21 training property inspection and accident incident
22 investigation and reporting. Had you done anything
23 to ensure that the General Manager of the Westin
24 Casuarina had performed those functions?

25 A. Nothing specific other than again to

1 review documents that would have been generated by
2 these particular categories.

3 Q. Okay. Would the General Manager or
4 the folks designated in these categories typically
5 send reports up to you to review?

6 A. They would have sent reports to the
7 Columbia Sussex Risk Management Department, then send
8 reports to me.

9 Q. Right. And had you received reports
10 from folks within the Columbia Sussex Risk Management
11 Department relating to how the Westin Casuarina was
12 carrying out this, appointing key personnel?

13 A. I don't recall seeing anything, no.

14 Q. The last item in that section says
15 that the hotel General Manager is to ensure that the
16 safety and loss prevention efforts are documented.
17 Again, is there anything that you did personally to
18 ensure that the hotel General Manager was carrying
19 out that responsibility?

20 A. No, other than directing him to comply
21 with this and to report the incidents and do his
22 inspections as they are called for in the manual.

23 Q. Okay. And do you recall reviewing any
24 documents indicating that he had in fact performed
25 that documentation?

1 A. I don't recall looking at anything,
2 no.

3 Q. Would there be any place at the
4 corporate offices in Ft. Mitchell that might have
5 documents of that type that had been prepared by the
6 Westin Casuarina manager?

7 A. There might be files of the inspection
8 reports, and I know there is files of Incident
9 Reports that have been prepared.

10 Q. Okay. We've been provided a certain
11 limited number of documents in this case related to
12 the Westin Casuarina. Were you involved in reviewing
13 documents that were compiled for production in this
14 case?

15 A. I don't recall reviewing those, but
16 this case has been going on for a number of years, so
17 I can't recall what I did, you know, a year or two
18 ago.

19 Q. Are you aware of any documents that do
20 exist, either Incident Reports or any of the
21 inspection reports of any type that do exist at
22 Columbia Sussex office in Ft. Mitchel that have not
23 been produced?

24 A. I'm not aware of any.

25 Q. Couple of pages beyond where we are

1 time the Westin Casuarina performed an analysis of
2 the incident involving Ms. Genereux?

3 A. I think I've already commented that it
4 was my understanding that certain reports were
5 prepared at the point of the filing of the litigation
6 that documented different employees' recollection of
7 the events at the time of the incident.

8 Q. Okay.

9 A. Can I take a quick break?

10 Q. Yeah, of course.

11 MR. BROWN: Yeah.

12 (A short break was taken.)

13 Q. Mr. Mitchel, I understand there was a
14 question you wanted to clarify an answer to?

15 A. Yes. My role involving risk
16 management at Columbia Sussex and Galleon Beach
17 Resort Limited changed in, and I can't remember the
18 exact time period, but 2002 or 2003, I was no longer
19 involved in overseeing risk management. And then
20 just recently within the last month I took on that
21 role again. So there's a gap in my involvement with
22 risk management from around, somewhere in Year 2002
23 or 2003 through recently. So I wanted to clarify
24 that there was a gap in my responsibility for risk
25 management.

1 Q. Okay. When you say "recently" you
2 were referring to 2007?

3 A. Yes.

4 Q. And do you know whether you were
5 overseeing the risk management function at the time
6 of Ms. Genereux's incident in May of 2002?

7 A. I believe I was.

8 (Email, May 3, 2005, marked for
identification as Mitchel Exhibit 8.)

9 Q. Okay. Mr. Mitchel, we've just handed
10 you what was marked as Exhibit 8 at the deposition.
11 This is a document with a typed signature of a fella
12 named Denzil Luke dated May 3rd, of 2005; do you see
13 that?

14 A. Yes.

15 Q. Okay. Is this the report that you
16 were talking about that reported the recollection of
17 employees relating to the incident involving
18 Ms. Genereux?

19 A. Yes.

20 Q. Were there any other reports like this
21 that you had seen?

22 A. I can't recall specifically, I thought
23 -- I thought Dan Szydiowski had done one, but it's
24 possible he just did that verbally with me.

25 Q. Okay. And Mr. Luke in his report

1 A. Yes.

2 Q. Do you know where at any point in time
3 the Westin Casuarina prepared an analysis of the
4 incident involved with Ms. Genereux?

5 A. I believe I mentioned before where
6 there wasn't, to my knowledge, an Incident Report
7 prepared at the time, so there wouldn't have been any
8 analysis of the accident if there wasn't any Incident
9 Report.

10 Q. Okay. What I'm -- and I apologize,
11 what I'm asking is slightly different. After it was
12 called to the attention of the General Manager of the
13 Westin Casuarina that an Incident Report had not been
14 prepared, do you know whether the hotel itself as
15 opposed to anything done by the attorneys, whether
16 the hotel itself had prepared any type of analysis?

17 A. Not to my knowledge.

18 Q. Okay. Earlier today you had mentioned
19 that there was another allegation of a sexual assault
20 at the Westin Casuarina involving a minor female
21 named Reynolds. Do you know whether any type of
22 analysis was prepared involving her incident?

23 A. There was an Incident Report prepared.

24 Q. Okay. And addition to the Incident
25 Report was there an analysis of how the Reynolds'

1 incident had occurred?

2 A. There wouldn't have been any
3 additional report beyond that Incident Report.

4 Q. On the -- Okay. The page that you're
5 looking at right now, the one captioned Accident
6 Investigation & Analysis talks about an analysis, is
7 it your understanding that the analysis is actually
8 incorporated into the Incident Report form?

9 A. Yes.

10 Q. Okay. And so in connection with the
11 Reynolds' incident, would there have been an analysis
12 undertaken and reported on the form?

13 A. Yes.

14 Q. One of the items mentioned as part of
15 this investigation analysis is a requirement to "come
16 to a conclusion. Make necessary recommendations for
17 change." Do you see that?

18 A. Yes.

19 Q. Do you know whether the hotel prepared
20 any conclusions with respect to Ms. Genereux's
21 incident, not on the form itself, because you've
22 indicated it doesn't exist, but do you know whether
23 they undertook any type of separate review that lead
24 them to come to a conclusion of the type referenced
25 here?

1 A. It's my recollection that there wasn't
2 any additional or change that was required to be made
3 in connection with that incident. So I think the
4 answer to your question is, no, we did not do
5 anything to change policy or procedure because of
6 that incident.

7 Q. Were there any policies or procedures
8 changed as a result of the Reynolds' incident?

9 A. I don't recall. I don't recall, you
10 know, there might have been but I don't recall.

11 Q. The page after the one you're looking
12 at right now is captioned Quarterly Safety Meetings
13 and Documentation?

14 A. Yes.

15 Q. Okay. I think you had mentioned
16 something to that a little bit earlier in the
17 deposition. Do you know whether or not the Westin
18 Casuarina did undertake quarterly safety meetings?

19 A. I don't have any specific knowledge to
20 that effect.

21 Q. Had you ever seen any reports of
22 quarterly safety meetings?

23 A. No, I have not.

24 Q. Had you been told by anybody at the
25 Risk Management Department at Columbia Sussex if they

1 had reviewed reports of quarterly safety meetings?

2 A. No.

3 Q. We had talked earlier this morning
4 about analyses that you had performed of loss trends
5 based on insurance records. This document, the
6 quarterly safety meeting and documentation page talks
7 about analyses of loss trends to be performed by the
8 General Manager and the hotel staff. Do you know
9 whether any loss-trend analyses had been undertaken
10 by the Westin Casuarina staff?

11 A. I've no specific knowledge of that.

12 Q. Okay. And I take it you didn't see
13 any such trends analyzed in writing?

14 A. No, not to my recollection.

15 Q. Okay. And I take it you didn't hear
16 of any such trends analyzed by the hotel that had
17 been reported to other members of the Columbia Sussex
18 Risk Prevention Department, Risk Management
19 Department?

20 A. Not to my knowledge.

21 Q. There's a reference in the second
22 paragraph to a quarterly cost allocation report from
23 the home office/risk management; do you see that?

24 A. Yes.

25 Q. What document is that referring to?

1 A. That's the report that I alluded to
2 earlier where it monitors timely compliance with
3 reporting of incidents.

4 Q. Would that particular document, copies
5 of that document be sent to the various hotels that
6 Columbia Sussex had a relationship with?

7 A. Yes, there would have been a copy
8 sent.

9 Q. The next page after the one you have
10 in front of you right now is captioned at the top
11 Reports and Forms - An Overview. Do you see that?

12 A. Yes.

13 Q. One heading up from the bottom of that
14 there's a heading that starts Safety
15 Checklist-Quarterly Procedures; do you see that?

16 A. Yes.

17 Q. And it requires quarterly inspection
18 of the hotel property by select members of management
19 and/or engineering, and describes that as "...vital
20 for the safety of our guests and employees." Do you
21 see that?

22 A. Yes.

23 Q. Do you know whether quarterly
24 inspections had been performed at the Westin
25 Casuarina?

1 A. I've no specific knowledge of that. I
2 know it's one of our required procedures, but I don't
3 have any specific knowledge.

4 Q. Okay. And I take it from that, you
5 haven't seen quarterly reports?

6 A. I've seen them, but I don't recall
7 specifically seeing one for this property.

8 Q. Had you heard from any of your
9 subordinates in the Risk Management Department that
10 they had been receiving quarterly inspection reports
11 from the Westin Casuarina?

12 A. I don't recall whether they reported
13 to me that they weren't getting reports from this
14 property.

15 Q. I'm sorry. That they were not?

16 A. They were not getting the reports.

17 Q. Had they in fact been receiving
18 quarterly reports from the Westin Casuarina, would
19 those be maintained on file at Columbia Sussex?

20 A. They would be for a period of time.

21 Q. Do you know what period of time would
22 be?

23 A. I believe generally we keep those kind
24 of things for three years.

25 Q. Okay. And do you know whether there

1 are any quarterly reports on file related to -- well,
2 dated from the time you became aware of this lawsuit?

3 A. I don't have any specific knowledge of
4 that.

5 Q. In addition to the Incident Reports
6 that were to be prepared for particular incidents,
7 was there a requirement that the hotel maintain a log
8 of all the Incident Reports that were being been
9 completed?

10 A. Yes, they're required to maintain a
11 log.

12 Q. And do you know whether the Westin
13 Casuarina had maintained a log?

14 A. I don't know if they did or not. I
15 know I didn't receive any indication that they
16 weren't.

17 Q. Did you receive any indication that
18 they were maintaining a log?

19 A. No. I generally only hear about
20 things if they don't comply.

21 Q. Since this lawsuit was filed on behalf
22 of Ms. Genereux, have you had occasion to see any
23 logs of Incident Reports, of incidents at the Westin
24 Casuarina?

25 A. I don't recall seeing any, no.

1 Q. Okay. Do you know whether or not the
2 Westin Casuarina had enacted a safety training
3 schedule?

4 A. Again, I didn't receive any reports
5 that they weren't and that's generally how I'm only
6 made aware of things when they don't comply, so I
7 would have assumed that they did.

8 Q. Okay. On the flip side though you had
9 not seen any reports that they in fact had complied?

10 A. No.

11 Q. And I take it you hadn't received any
12 information from other folks in the Risk Management
13 Department of Columbia Sussex that they had received
14 reports that the Westin Casuarina was carrying out a
15 safety training schedule?

16 A. The people in the Risk Management
17 Department would have received those reports, so I --
18 but I didn't get any report from them that they
19 weren't complying.

20 Q. Okay. Did you get any report from
21 them that the Westin Casuarina was complying?

22 A. I wouldn't have expected one though.
23 I did not, but I wouldn't have expected one.

24 Q. Did you ever do anything personally to
25 find out whether or not the Westin Casuarina was

1 providing the training referenced in Section 7?

2 A. No, I did not.

3 Q. On page 7-2, 7-2, toward the very
4 bottom there is a section that says Documentation of
5 Training; do you see that?

6 A. Yes.

7 Q. And it requires that the employees who
8 attend the training sign an attendance roster?

9 A. Yes.

10 Q. Do you know whether there is an
11 attendance roster in existence for the Westin
12 Casuarina for employee training?

13 A. Again, if they -- if the property
14 complied with the training they would have submitted
15 documentation of the attendance log for that specific
16 training. And since I didn't receive any notice that
17 they weren't complying, I assume that they did.

18 Q. Okay. This mentions that the records
19 would be on file for three years, right?

20 A. Yes.

21 Q. Actually for at least three years it
22 says. Would Columbia Sussex have a copy of those
23 records going back at least three years then?

24 A. I would expected that we would, yes.

25 Q. Okay. The last sentence in bold on

1 Q. Okay. There is a reference in there
2 to closed circuit television cameras being used to
3 monitor the garages?

4 A. Yes.

5 Q. Do you know whether there are any
6 closed circuit television systems that are in use at
7 the Westin Casuarina for any purpose?

8 A. I'm not aware of any.

9 Q. Do you know whether there have been
10 any at the Westin Casuarina?

11 A. No, I don't.

12 Q. A little further down the same
13 document there's a reference to security patrols,
14 specifically to unschedule rounds and irregular
15 patrols. Do you know whether there have been any
16 security patrols used at the Westin Casuarina?

17 A. I don't have any specific knowledge of
18 that.

19 Q. In the document dealing with garages
20 about the middle of it there's a reference to
21 controlling stairwells and elevators. Do you know
22 whether there were any, whether there was any access
23 control at the Westin Casuarina for different areas
24 of the property?

25 A. I'm not sure what you mean by "access

1 A. I'm not aware of any. I know at some
2 of our hotels after a certain hour they lock the
3 outside doors. I don't know specifically if that is
4 done at the Westin Casuarina or at what time that is
5 done, if it is done.

6 Q. All right. Are you familiar with the
7 spa building that's located at the Westin Casuarina?

8 A. Very superficially.

9 Q. Okay. You understand that it exist as
10 a separate building on property grounds?

11 A. Yes.

12 Q. Good. Do you know whether there are
13 any restrictions placed on access to that particular
14 building after the spa is closed?

15 A. I have no specific knowledge of that,
16 although I would expect that certain areas of that
17 building, if not all that building, are locked at a
18 certain point in the evening, but I don't know that
19 for a fact.

20 Q. And why would you suspect that?

21 A. Within the spa area itself there is
22 inventory and supplies and things that we would, you
23 know, take some action to restrict access if there
24 was no one there to monitor it.

25 Q. Okay. In the immediate area of the

1 spa building, are you familiar, as well, with the
2 governor's ballroom facility?

3 A. Yes, I know there is a ballroom in the
4 back part of that building, yes.

5 Q. Okay. And is it your understanding,
6 as well, that during hours when the ballroom is not
7 in use, that portion of the property is also locked?

8 A. I don't have any knowledge of that,
9 whether it's locked or not.

10 Q. Is that something you would expect to
11 happen?

12 A. I would expect that, you know, after
13 use or late at night that that building would, that
14 part of the building would be secured.

15 Q. Okay. When you say "late at night"
16 what are you referring to?

17 A. I think it all depends on, you know,
18 the local properties -- use of the property. If
19 there -- you know -- it all depends on the
20 circumstances. If they've got events going on that
21 are -- or if there's activity on the island or in the
22 area that would make, you know, make it practical to
23 leave access open, I would think they would do that,
24 and if -- And again I don't know what -- what local
25 policy the General Manager would have put into place

(Columbia Sussex Manager's Manual, marked for identification as Mitchel Exhibit 9.)

Q. Okay. And let me represent to you so

3 that the record is accurate. John Johnson, one of
4 the local attorneys in Boston, had made the manual
5 accessible to me in his office and we had only copied
6 portions of it. So the document that you have is not
7 the complete manual, it's just excepts from --

A. Six -- doesn't appear to be fat

9 enough. Okay.

10 Q. Am I correct in understanding that
11 that, this is actually prepared by Columbia Sussex to
12 serve as sort of a detailed guide for the managers as
13 to how they should carry out certain practices at the
14 hotel?

15 A. Yes.

16 Q. And I gathered from just sort of a
17 review of it that it's primarily related to financial
18 matters?

19 A. Primarily, it's paperwork basically
20 what it addresses.

21 Q. Okay. There's a reference in there to
22 something called a D-Sheet?

23 A Yes

24 Q. Can you tell just in a general sense
25 what that is?

1 night?

2 A. I don't recall.

3 Q. In the course of discussing this
4 incident with Mr. Szydowski or any of the employees,
5 either at Columbia Sussex or at Galleon Beach, and
6 again putting aside conversations with counsel, had
7 you come to learn anything about other criminal
8 incidents at the Westin Casuarina?

9 A. No.

10 Q. Had you come to learn anything about
11 complaints on the island about the level of crime in
12 the Caymans at the time of this incident?

13 A. The only information I get is that the
14 Cayman Islands is one of the safest islands in the
15 Caribbean.

16 Q. Did you learn that specifically in
17 connection with this incident or is that just sort of
18 a --

19 A. That's a general claim by the Cayman
20 Islands, tourism department.

21 Q. Do you know if anything had been done
22 by, by the Westin Casuarina to obtain information
23 relating to crime on the Caymans at any point in
24 time?

25 A. No.

1 Q. Earlier when we were talking about
2 analyzing claims for various hotels that were
3 operated or managed by the -- or owned by Columbia
4 Sussex, we talked about some of the information that
5 we gathered in the course of preparing analysis,
6 would that information include information relating
7 to crime levels in the area of the hotel?

8 A. No, that would only -- that report is
9 only -- would have been an analysis of the Incident
10 Report.

11 Q. Okay. And other than putting that
12 particular analysis aside, do you know of any other
13 folks at Columbia Sussex that analyze crime levels in
14 the vicinities of Columbia Sussex or the managed
15 hotels for any purpose?

16 A. No.

17 Q. After the incident with Ms. Genereux,
18 did you come to learn of any, any other incident
19 involving alleged criminal acts at the Westin
20 Casuarina?

21 A. Other than the one I had already
22 mentioned, the Reynolds case, which happened years
23 before that. Wasn't aware of anything else.

24 Q. Okay. And we talked earlier about the
25 two, two other cases at the Casuarina that gave rise

1 manual, there's a provision that states that all
2 interior and exterior areas, grounds and parking
3 facilities must be kept safe and secure. And would
4 you agree that that provision would apply to the
5 Westin Casuarina?

6 A. If it's in the Westin manual it was
7 provided to the Galleon Beach Resort Limited, then,
8 yeah.

9 Q. Okay. There's another provision in it
10 that says, "Adequate safety and security precaution
11 shall be taken in all areas of the hotel." Would
12 that also applied to the Westin --

13 A. Yes, to the extent it's in the manual
14 it's been provided to them, yes.

15 Q. And the last one that I want to read
16 to you, there's a provision relating to the public
17 restrooms on a heading that says "safety and
18 security." It says adequate safety/security
19 precautions must be taken in all public restrooms.
20 All emergency lights must be in good working
21 conditions at all times. Access to these areas and
22 all unauthorized persons must be restricted. Would
23 you agree that that would apply to the Westin
24 Casuarina?

25 A. Yes.